IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

AS.No. 683 of 1997()

OS.39/1991 of I ADDL.SUB COURT, THRISSUR
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APPELLANT: PLAINTIFF:

K.N.NEELAKANTAN NAMBOODIRI,
ADVOCATE RECEIVER IN I.P.20/1997
OF THRISSUR SUB COURT,
S/O.NARAYANAN NAMBOODIRI
KANDACNHATHA MANA, CHOOLISSERY VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.N.P.SAMUEL

RESPONDENTS: DEFENDANT:

VELAYUDHAN, S/O. VALLASSERY SANKARANKUTTY,
GURUVAYOOR DESOM, CHAVAKKAD VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.RAJIT

THIS APPEAL SUITS HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

A.S.No.683 of 1997

Dated this the 12th September, 2007.

J U D G M E N T

Appellant is an interim receiver appointed by the Sub Court, Thrissur, in I.P.No.20/1987, in respect of the assets of a registered firm, by name 'Shalimar Financiers'. The firm took a building belonging to the respondent on rent, and gave an amount of Rs.25,000/= as advance. The receiver took possession of the building also. He filed an interim report seeking further orders. The learned Sub Judge directed the receiver to return the building back to the owner and to initiate separate proceedings to recover an amount of Rs.25,000/= given as advance to the land lord. It was further ordered that if the landlord has got any claim, it was for him to approach the insolvency court. In view of the directions issued by the Sub Court, the Receiver had filed the suit.

2. The respondent landlord raised two contentions. One, there was a subsequent enhancement in the rate of rent and he was entitled to adjust that arrears of rent, from the amount given as advance. It was also contented that he had to pay an amount of

Rs.600/= as electricity charges, Rs.30/= as water charges and Rs.300/= as telephone charges, which the tenant was liable to pay, and he was forced to pay the same. Hence he contented that he was entitled to adjust that amount also from the advance, and thus, the total balance amount will come to Rs.21,525/=. The question now arise for consideration is as to whether the respondent was entitled to adjust those amounts.

3. The trial court took a view that the question whether the defendant is entitled to priority over the other creditors or whether he was entitled to adjust any amount are matters to be decided in the Insolvency Petition. It was found that those are all matters to be considered after the order of adjudication. Since the order of adjudication has not been made, the suit was premature in nature, and hence, dismissed the suit.

It is true that there is also an observation that the defendant has got every right to deduct the arrears of rent. But the suit was dismissed not on that ground. Since, the court below found

that the suit was premature, that finding is without any legal force. So, without prejudice to the right of the receiver to raise the questions raised in the appeal, in the Insolvency petition, this appeal is closed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

A.S.No.683 of 1997

J U D G M E N T

Dated: 12th September, 2007.